

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

Case No. 1:18-cv-00068

UNITED STATES OF AMERICA, *et al.*,

Defendants,

and

KARLA PEREZ, *et al.*,

STATE OF NEW JERSEY,

Defendant-Intervenors.

**DEFENDANTS' NOTICE OF HHS APPROVAL OF AN ACA STATE
INNOVATION WAIVER REQUEST FROM NEW YORK**

The Federal Defendants hereby submit this notice to inform the Court that the U.S. Department of Health and Human Services and the Department of the Treasury (collectively, the Departments) have approved an application for a State Innovation Waiver under Section 1332 of the Patient Protection and Affordable Care Act (ACA) from the state of New York (Section 1332 Waiver). *See* Letter to James V. McDonald, Commissioner, New York State Department of Health, March 1, 2024 at 1, available at <https://www.cms.gov/files/document/ny-1332-waiver-approval-stcs.pdf> (last visited Mar. 4, 2024). As explained below, the Section 1332 Waiver increases the number of individuals eligible for certain health insurance provided by the State of New York and supported with funds made available to the State by the federal government but has no impact on expenditures by the plaintiff States.

Prior to approval of the New York Section 1332 Waiver, certain low-income residents in New York were eligible for health coverage under the State’s Basic Health Program (BHP) known as the Essential Plan (EP).¹ See NYC Health Insurance Link, Immigrants, <https://www.nyc.gov/site/ochia/find-what-fits/immigrants.page#> (last visited Mar. 4, 2024). In May 2023, New York requested a waiver under Section 1332 of the ACA to, among other things, create a new coverage program, called the EP Expansion, that generally mirrors and will replace New York’s BHP, with expanded eligibility to include certain New York residents with estimated household income up to 250% of the Federal Poverty Level, for plan years 2024 through 2028.² See Letter at 1. As amended, the State’s request would allow Deferred Action for Childhood Arrivals (DACA) recipients residing in New York who meet the income requirements to participate in the EP Expansion. *Id.*, Appendix A at 1. The Section 1332 Waiver approval is generally scheduled to take effect for a waiver period of April 1, 2024 through December 31, 2028, but the expansion to certain DACA recipients residing in New York will not take effect until August 2024. *Id.*, Appendix at 2 n.1.

¹ A BHP is a health benefits coverage program authorized under Section 1331 of the Affordable Care Act (ACA) for certain low-income residents “who do not qualify for Medicaid, CHIP, or other minimum essential coverage and have income between 133 percent and 200 percent of the federal poverty level (FPL).” Centers for Medicare & Medicaid Services, Basic Health Program, <https://www.medicaid.gov/basic-health-program/index.html> (last visited Mar. 4, 2024).

² Section 1332 of the ACA permits a state to apply for a Section 1332 Waiver “to pursue innovative strategies for providing residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA.” Centers for Medicare & Medicaid Services, Section 1332: State Innovation Waivers, <https://www.cms.gov/marketplace/states/section-1332-state-innovation-waivers> (last visited Mar. 4, 2024). Previously, Colorado and Washington obtained Section 1332 Waivers to expand their states’ health insurance coverage to include noncitizens regardless of legal status. See CMS Letter to Governor Jay Inslee, State of Washington, <https://www.cms.gov/files/document/1332-wa-approval-letter-stcs.pdf>, Dec. 9, 2022; CMS Letter to Michael Conway, Commissioner of Insurance, Colorado Division of Insurance, <https://www.cms.gov/files/document/1332-co-amendment-approval-stcs.pdf>, June 23, 2022.

New York's expansion of its state-based healthcare offerings to its own residents, including but not limited to DACA recipients residing in New York, will not impose any costs on plaintiffs and does not alter DHS's administration of DACA policy. *Cf.* ECF No. 728 at 17-18 (discussing impact on Texas's standing arguments of increased expenditures by Texas due to potential federal health insurance program changes).

Dated: March 4, 2024

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Respectfully submitted,

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